

State of Arizona
Senate
Forty-fifth Legislature
Second Regular Session
2002

CHAPTER 208

SENATE BILL 1409

AN ACT

AMENDING TITLE 45, CHAPTER 3.1, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 3.1; AMENDING SECTIONS 45-255 AND 45-2423, ARIZONA REVISED STATUTES; RELATING TO WATERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 45-255, Arizona Revised Statutes, is amended to
3 read:

4 45-255. Appointment of master; compensation

5 A. The superior court judge assigned to the adjudication may appoint
6 a master or masters under rule 53 of the Arizona rules of civil procedure to
7 report on legal and factual issues designated under a specific order of
8 reference.

9 B. A master's compensation and OTHER expenses RELATED TO THE CONDUCT
10 OF AN ADJUDICATION shall be fixed by the court and paid out of the fund of
11 fees paid by the claimants pursuant to section 45-254. ~~in the event such IF~~
12 THAT fund of fees is insufficient, a master's compensation and OTHER expenses
13 RELATED TO THE CONDUCT OF AN ADJUDICATION shall be paid from the state
14 general fund as a separate line item appropriation for the superior court.

15 Sec. 2. Title 45, chapter 3.1, Arizona Revised Statutes, is amended
16 by adding article 3.1, to read:

17 ARTICLE 3.1. INDIAN WATER RIGHTS SETTLEMENTS

18 45-841.01. Accrual of long-term storage credits; Indian water
19 rights settlements

20 A. TO FURTHER THE IMPLEMENTATION OF INDIAN WATER RIGHTS SETTLEMENTS
21 IN THIS STATE, AN INDIAN COMMUNITY MAY ACCRUE LONG-TERM STORAGE CREDITS AS
22 PRESCRIBED BY THIS SECTION.

23 B. THIS SECTION APPLIES ONLY TO THE SETTLEMENT OF A WATER RIGHTS CLAIM
24 BY A FEDERALLY RECOGNIZED INDIAN COMMUNITY IN THIS STATE IF THE SETTLEMENT
25 PROVIDES FOR OFF RESERVATION STORAGE OF ITS CENTRAL ARIZONA PROJECT WATER AND
26 ONLY AFTER THE SETTLEMENT RESULTS IN A DISMISSAL WITH PREJUDICE OF A CLASS
27 ACTION CLAIM THAT HAS BEEN PENDING IN THE UNITED STATES DISTRICT COURT FOR
28 MORE THAN FIVE YEARS.

29 C. BEFORE ACCRUING ANY LONG-TERM STORAGE CREDITS UNDER THIS SECTION,
30 BOTH OF THE FOLLOWING CONDITIONS APPLY:

31 1. A PARTY SEEKING TO PARTICIPATE IN THE ACCRUAL OF LONG-TERM STORAGE
32 CREDITS UNDER THIS SECTION SHALL FILE WRITTEN NOTICE WITH THE DIRECTOR THAT
33 THE REQUIREMENTS OF SUBSECTION B OF THIS SECTION HAVE BEEN MET.

34 2. THE DIRECTOR SHALL FIND THAT THE REQUIREMENTS OF SUBSECTION B OF
35 THIS SECTION HAVE BEEN MET.

36 D. BEFORE ACCRUING ANY LONG-TERM STORAGE CREDITS UNDER THIS SECTION,
37 A PARTY SEEKING TO PARTICIPATE IN THE ACCRUAL OF LONG-TERM STORAGE CREDITS
38 UNDER THIS SECTION SHALL FILE WITH THE DIRECTOR ALL OF THE FOLLOWING
39 INFORMATION:

40 1. A WRITTEN NOTICE OF THE PARTIES' INTENT TO BEGIN THE DELIVERY OF
41 CENTRAL ARIZONA PROJECT WATER THAT WAS MADE AVAILABLE TO THE INDIAN COMMUNITY
42 BY THE WATER RIGHTS SETTLEMENT TO THE HOLDER OF GRANDFATHERED GROUNDWATER
43 RIGHTS IN AN ACTIVE MANAGEMENT AREA.

44 2. A SWORN STATEMENT BY THE HOLDER OF THE GRANDFATHERED GROUNDWATER
45 RIGHTS THAT THE HOLDER WILL USE THE WATER DELIVERED OFF OF INDIAN COMMUNITY

1 LANDS ON A GALLON-FOR-GALLON SUBSTITUTE BASIS INSTEAD OF GROUNDWATER THAT
2 OTHERWISE WOULD HAVE BEEN PUMPED PURSUANT TO THE GRANDFATHERED GROUNDWATER
3 RIGHTS FROM WITHIN AN ACTIVE MANAGEMENT AREA.

4 3. A LISTING AND DESCRIPTION OF THE GRANDFATHERED GROUNDWATER RIGHTS
5 THAT WILL NOT BE EXERCISED BY THE HOLDER BECAUSE OF THE DELIVERY OF THE WATER
6 THAT IS DELIVERED BY THE INDIAN COMMUNITY.

7 4. A HYDROLOGIC REPORT ASSESSING THE EFFECT OF NONEXERCISE OF
8 GRANDFATHERED GROUNDWATER RIGHTS UNDER THIS SECTION ON ANY UNDERGROUND
9 STORAGE FACILITY THAT WAS CONSTRUCTED AS A STATE DEMONSTRATION PROJECT AND
10 THAT IS LOCATED WITHIN TEN MILES OF THE POINT OF WITHDRAWAL FOR THE
11 GRANDFATHERED GROUNDWATER RIGHTS.

12 E. THE DIRECTOR SHALL REVIEW THE HYDROLOGIC REPORT FILED PURSUANT TO
13 SUBSECTION D, PARAGRAPH 4 OF THIS SECTION AND SHALL MAKE SUCH MODIFICATIONS
14 TO THE STATE DEMONSTRATION PROJECT'S UNDERGROUND STORAGE FACILITY PERMIT AS
15 THE DIRECTOR DEEMS APPROPRIATE.

16 F. IF THE DIRECTOR DETERMINES THAT THE PARTIES HAVE COMPLIED WITH
17 SUBSECTION D OF THIS SECTION, THE INDIAN COMMUNITY MAY BEGIN ACCRUING
18 LONG-TERM STORAGE CREDITS FOR THE DELIVERY OF CENTRAL ARIZONA PROJECT TO THE
19 HOLDER OF THE GRANDFATHERED GROUNDWATER RIGHTS, BUT ONLY IF THE FOLLOWING
20 APPLY:

21 1. BY MARCH 31 OF EACH YEAR, THE HOLDER OF THE GRANDFATHERED
22 GROUNDWATER RIGHTS FILES AN ANNUAL REPORT WITH THE DIRECTOR FOR THE PRECEDING
23 CALENDAR YEAR. THE ANNUAL REPORT SHALL INCLUDE THE FOLLOWING INFORMATION:

24 (a) THE TOTAL QUANTITY OF WATER RECEIVED FROM THE INDIAN COMMUNITY
25 DURING THE YEAR FOR USE BY THE HOLDER UNDER THIS SECTION.

26 (b) A LISTING OF THOSE GRANDFATHERED GROUNDWATER RIGHTS THAT WERE NOT
27 EXERCISED DURING THE YEAR BY THE HOLDER BECAUSE OF THE RECEIPT OF CENTRAL
28 ARIZONA PROJECT WATER DELIVERED BY THE INDIAN COMMUNITY.

29 (c) SUCH OTHER INFORMATION AS THE DIRECTOR MAY REASONABLY REQUIRE.

30 2. THE DIRECTOR FINDS THAT THE WATER REPORTED AS RECEIVED BY THE
31 GRANDFATHERED GROUNDWATER RIGHT HOLDER WAS USED ON A GALLON-FOR-GALLON
32 SUBSTITUTE BASIS FOR GROUNDWATER.

33 3. THE INDIAN COMMUNITY HAS OFFERED TO SELL THE ARIZONA WATER BANKING
34 AUTHORITY TEN PER CENT OF ANY LONG-TERM STORAGE CREDITS ACCRUABLE BY THE
35 INDIAN COMMUNITY UNDER THIS SECTION AT A PRICE PER ACRE-FOOT AT THE TIME OF
36 SALE EQUAL TO THE AUTHORITY'S COST OF DELIVERING AND STORING WATER AT AN
37 UNDERGROUND STORAGE FACILITY THAT WAS CONSTRUCTED AS A STATE DEMONSTRATION
38 PROJECT AND THAT IS LOCATED WITHIN TEN MILES OF THE POINT OF WITHDRAWAL OF
39 ANY OF THE GRANDFATHERED GROUNDWATER RIGHTS IDENTIFIED IN THE LIST FILED WITH
40 THE DIRECTOR PURSUANT TO SUBSECTION D, PARAGRAPH 3 OF THIS SECTION, EXCEPT
41 THAT ANY CREDITS PURCHASED PURSUANT TO SUCH OFFER MAY NOT BE RECOVERED WITHIN
42 FIVE MILES OF THE EXTERIOR RESERVATION BOUNDARY OF THE INDIAN COMMUNITY.

43 G. THE WATER THAT IS RECEIVED UNDER THIS SECTION BY THE HOLDER OF THE
44 GRANDFATHERED GROUNDWATER RIGHT IS DEEMED TO BE GROUNDWATER FOR ALL PURPOSES
45 OF CHAPTER 2 OF THIS TITLE AS IF THE HOLDER HAD WITHDRAWN IT FROM A

1 WELL. THE HOLDER IS RESPONSIBLE FOR ALL RECORDS, REPORTS AND FEES REQUIRED
2 BY CHAPTER 2 OF THIS TITLE RELATING TO THE WATER RECEIVED.

3 H. THE DIRECTOR SHALL ESTABLISH A LONG-TERM STORAGE ACCOUNT FOR THE
4 INDIAN COMMUNITY IN ACCORDANCE WITH SECTION 45-852.01 AND EACH YEAR SHALL
5 CREDIT TO THAT LONG-TERM STORAGE ACCOUNT NINETY-FIVE PER CENT OF THE WATER
6 RECEIVED BY THE HOLDER OF THE GRANDFATHERED GROUNDWATER RIGHT DURING THE
7 PRECEDING YEAR THAT MEETS THE REQUIREMENTS OF SUBSECTION F OF THIS SECTION.

8 I. LONG-TERM STORAGE CREDITS ACCRUED PURSUANT TO THIS SECTION MAY BE
9 USED OR ASSIGNED IN ANY MANNER THAT IS CONSISTENT WITH THIS CHAPTER.

10 J. THE MAXIMUM AMOUNT OF LONG-TERM STORAGE CREDITS THAT MAY BE ACCRUED
11 BY AN INDIAN COMMUNITY UNDER THIS SECTION IN ANY YEAR IS TEN THOUSAND ACRE
12 FEET.

13 Sec. 3. Section 45-2423, Arizona Revised Statutes, is amended to read:
14 45-2423. Powers and duties of authority

15 A. The authority, acting through its commission, shall:

16 1. Administer the Arizona water banking fund in accordance with this
17 chapter.

18 2. Coordinate its staffing needs with the director and CAWCD.

19 3. Coordinate the storage of water and distribution and extinguishment
20 of long-term storage credits with the director in accordance with this
21 chapter and the water management objectives set forth in chapter 2 of this
22 title.

23 4. Coordinate with CAWCD for the purchase, delivery and storage of
24 Colorado river water delivered through the central Arizona project in
25 accordance with this chapter.

26 5. Coordinate and confer with state agencies, municipal corporations,
27 special districts, authorities, other political subdivisions, private
28 entities, Indian communities and the United States on matters within their
29 jurisdiction relating to the policy and purposes of this chapter.

30 6. Determine, on an annual basis, the quantity of Colorado river water
31 to be stored by the authority and where that storage will occur.

32 7. Account for, hold and distribute or extinguish long-term storage
33 credits in accordance with this chapter.

34 8. Comply with all aspects of chapter 3.1 of this title.

35 9. Adopt an official seal for the authentication of its records,
36 decisions and resolutions.

37 10. Keep the minutes of its meetings and all records, reports and other
38 information relating to its work and programs in permanent form,
39 systematically indexed and filed.

40 B. The authority, acting through its commission, may:

41 1. Apply for and hold water storage permits.

42 2. Accrue, exchange, assign, lend and hold long-term storage credits
43 in accordance with this chapter.

44 3. Exchange Colorado river water for any type of water in accordance
45 with chapter 4 of this title.

1 4. Enter into water banking services agreements.

2 5. Charge fees for water banking services.

3 6. Apply for and hold any water quality permit required for water
4 storage by the department of environmental quality under title 49, chapter
5 2, article 3 or by federal law.

6 7. Make and execute all contracts, including intergovernmental
7 agreements pursuant to title 11, chapter 7, article 3, that shall be signed
8 by the chairperson, or in the chairperson's absence the vice-chairperson, and
9 attested by the secretary, necessary to:

10 (a) Obtain for storage Colorado river water delivered through the
11 central Arizona project. Agreements by which the authority obtains Colorado
12 river water are exempt from the requirements of title 41, chapter 23.

13 (b) Obtain effluent for storage but only after the authority has
14 stored all available excess Central Arizona project water or when central
15 Arizona project water is otherwise unavailable or undeliverable.

16 (c) Affiliate water storage permits held by the authority with storage
17 facility permits.

18 (d) Store Colorado river water at permitted storage facilities.

19 (e) Distribute long-term storage credits earned by the authority to
20 make water available to municipal and industrial users of Colorado river
21 water in this state that are inside or outside of the CAWCD service area, in
22 accordance with the provisions of this chapter.

23 (f) Store Colorado river water in Arizona on behalf of appropriately
24 authorized agencies in California and Nevada.

25 (g) Cause a decrease in Arizona diversions from the Colorado river,
26 ensuring that Arizona will use less than its full entitlement to Colorado
27 river water in years in which California and Nevada agencies are
28 contractually authorized to call on the water stored on their behalf by the
29 authority.

30 (h) Distribute long-term storage credits earned by the authority on
31 behalf of agencies in California and Nevada to Colorado river water users in
32 Arizona to use in place of Colorado river water that would have otherwise
33 been used by those Arizona users.

34 8. Sue and be sued.

35 9. Perform all other acts necessary for the authority to carry out its
36 purposes, powers and duties in accordance with this chapter.

37 10. Submit a request for a general fund appropriation to the
38 legislature each year. A request shall be accompanied by a budget detailing
39 how the appropriation would be used and justifying the need for the
40 appropriation.

41 11. Form temporary committees as deemed necessary by the authority to
42 provide the authority with advice on issues identified by the authority.
43 Advisory committees may consist of members of the public selected by the
44 authority, members of the authority and authority staff.

1 12. PURCHASE LONG-TERM STORAGE CREDITS ACCRUED BY AN INDIAN COMMUNITY
2 PURSUANT TO SECTION 45-841.01, PROVIDED SUCH LONG-TERM STORAGE CREDITS ARE
3 DISTRIBUTED OR EXTINGUISHED IN ACCORDANCE WITH THE RULES OF OPERATION
4 SPECIFIED IN SECTION 45-2457 FOR THE FUNDS USED BY THE AUTHORITY TO PURCHASE
5 THE CREDITS.

6 Sec. 4. Indian water rights settlements; hydrologic report;
7 preparation and review

8 A. The hydrologic report required by section 45-841.01, subsection D,
9 Arizona Revised Statutes, shall be prepared by the operator of the
10 underground storage facility using the best available hydrologic data,
11 including the Arizona department of water resources regional groundwater flow
12 model for the Tucson active management area and the groundwater flow model
13 prepared by the operator of the underground storage facility. The report
14 shall describe:

15 1. The magnitude of groundwater level change reasonably expected to
16 occur as a result of the nonexercise of the grandfathered groundwater rights.

17 2. The effect that the expected change in groundwater level will
18 likely have on the operation of the underground storage facility.

19 B. The hydrologic report shall be filed with the director of water
20 resources no later than February 1, 2003.

21 C. Within ninety days after the hydrologic report is filed, the
22 director of water resources shall notify the operator of the underground
23 storage facility of the director's determination regarding modification, if
24 appropriate, of the underground storage facility permit.

25 Sec. 5. Delayed repeal

26 Section 4 of this act is repealed on February 1, 2004.


APPROVED BY THE GOVERNOR MAY 9, 2002.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 9, 2002.

Passed the House April 29, 2002,

by the following vote: 56 Ayes,

0 Nays, 4 Not Voting


Speaker of the House

Norman L. Joyce
Chief Clerk of the House

Passed the Senate April 2, 2002,

by the following vote: 26 Ayes,

0 Nays, 4 Not Voting



President of the Senate

Chairman Billington
Secretary of the Senate

**EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR**

This Bill was received by the Governor this

day of July, 2018,

at o'clock M.

Secretary to the Governor

Approved this _____ day of _____

_____ , 20 _____ ,

at _____ o'clock _____ M.

Governor of Arizona

**EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE**

This Bill was received by the Secretary of State

this day of , 20 ,

at _____ o'clock _____ M.

Secretary of State

S.B. 1409

SENATE CONCURS IN HOUSE AMENDMENTS
AND FINAL PASSAGE

Passed the Senate May 7, 20 02,

by the following vote: 28 Ayes,

0 Nays, 2 Not Voting

Ronald Arant
President of the Senate

Charmian Bellenton
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

7 day of May, 20 02,

at 4:30 o'clock P M.

Sandra Gray
Secretary to the Governor

Approved this 9 day of

May, 20 02,

at 12:51 o'clock P M.

Janie K. Hull
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 9 day of May, 20 02

at 3:27 o'clock P M.

Betsy Dayless
Secretary of State

S.B. 1409